

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WARREN EASTERLING,

Plaintiff,

:

Case No. 3:19-cv-112

- vs -

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

DONALD J. TRUMP, et al.,

Defendants.

:

**DECISION AND ORDER STRIKING SECOND PURPORTED
RESPONSE TO RENEWED ORDER TO FILE PROOF OF SERVICE**

On May 29, 2019, the undersigned, for a third time, ordered Plaintiff to file forthwith proof of service, in the form required by Fed.R.Civ.P. 4(l), as to each Defendant he claims has been served (ECF No. 23). On May 28, 2019, Plaintiff filed a document entitled “Plaintiff’s: Respond to the Order to File Proof of Service (Doc. # 23)”. The Magistrate Judge ordered that document stricken because it did not comply with the Renewed Order to File and again ordered Easterling to comply (ECF No. 25).

Plaintiff has now filed a document entitled “Plaintiff’s Respond to the Order to File Proof of Service (Doc. # 25)” (ECF No. 26). That document is also STRICKEN for the following non-exclusive reasons:

1. Fed.R.Civ.P. 4(l)(1) provides in pertinent part: “Except for service by a United States marshal or deputy marshal, proof must be by the server’s affidavit.” The Court expressly ordered proof be made “in the form required by Fed.R.Civ.P. 4(l).” No affidavit by the server has been provided.
2. Plaintiff asserts “On file in the clerk's office is proof of service confirmed by a signed green card from the U.S. Postal Service signifying receipt of the complaint and a summons form executed by the clerk of courts.” Whatever the filed green cards prove, they do not prove service of process by certified mail on any of the named Defendants. The Magistrate Judge has confirmed with each of the Deputy Clerks of court at Dayton that none of them has received from Plaintiff any envelope prepared for mailing by certified mail in the manner required by S. D. Ohio Civ. R. 4.2 nor have they mailed any such envelope. S. D. Ohio Civ. R. 4.2 provides the exclusive method by which certified mail service can be made of a summons and complaint issued by this Court.
3. Plaintiff recites that he is “unable to prove he provided envelopes to the clerk’s office since those envelopes have been mailed.” The question is not whether the envelopes have been mailed, but by whom. As pointed out to Plaintiff in the last Order, the only way a plaintiff can make valid service of process by certified mail in this Court is by following S. D. Ohio Civ. R. 4.2. Because none of the certified mail envelopes in question were mailed by a Deputy Clerk of this Court, none of the green receipt cards is proper proof of certified mail service. Plaintiff asserts “[t]he Magistrate is unable to prove the packages containing the complaint were not mailed by the clerk’s office, . . .” Not so. The Magistrate Judge has already obtained that proof by confirming with every Deputy Clerk that neither she nor he mailed any of those envelopes. But more to the point, the burden is not on the Magistrate Judge to prove anything. Rather, Fed.R.Civ.P. 4(l) requires the server to provide proof by affidavit. If Plaintiff asserts he gave the envelopes to a Deputy Clerk, he can file an affidavit to that effect.

Plaintiff is hereby that under Fed.R.Civ.P. 4(m), the Court must dismiss the case against any defendant who has not been served with process within ninety days after the complaint is filed. This case was filed on April 16, 2019, the ninetieth day after which is July 15, 2019. The Magistrate Judge will accordingly recommend dismissal of the case as to any Defendant who has not been properly served by July 15, 2019.

Thus far Plaintiff has failed completely (i.e., as to each named Defendant) to prove service of process in the manner provided by Fed.R.Civ.P. 4(l). The Court Order that he do so forthwith remains outstanding.

June 11, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge